IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2359 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

Y.N. GADHVI

Versus

GPSC

Appearance:

MR MG NAGARKAR for Petitioner

MR DN PATEL for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/07/2001

ORAL JUDGEMENT

#. The petitioner who is a Government servant serving under the Directorate of Marketing & Inspection Department of Government of India had applied for appearing in the Class-I & II Gujarat Civil Services

Examination which was undertaken by the Gujarat Public Service Commission ("the GPSC" for short). The petitioner had appeared in the written examination which was held as back as in June, 1986. Subsequently, the petitioner was called for personal interview which was held on 6.5.1988. The result was declared on 13.11.1988. The petitioner came to know that he has secured 328 marks out of total 600 marks. It is averred in para 4 of the petition that the petitioner came to know that he has secured only 24 marks out of total 80 marks so far as the oral interview is concerned. On the basis of the aforesaid marks, in aggregate, the petitioner secured 352 marks out of total 680 marks. It is the case of the petitioner that in the oral interview, one of the members of the Board tried to favour some candidates. It is also his say that relevant questions were not asked in the oral interview. The aforesaid selection is, therefore, challenged on the ground that oral interview was not taken in a proper manner and that members of the Interviewing Committee acted in a mala fide manner and tried to favour certain candidates.

#. Some allegations are also made against one of the members of the Selection Committee, namely, Mr.B.K.Gadhvi. It is averred in para 9 of the petition that since he belongs to the sub-caste Maru-Gadhvi community, he has given more marks to the candidates belonging to the said community. It is stated in the said para that right of the petitioner to be selected on Class-I & II post is adversely affected due to the tendency of favouritism and nepotism adopted by the members of the Selection Committee. In the petition, basic averment is made regarding mala fide and arbitrary behaviour on the part of the members of the Selection Committee.

#. On the basis of the aforesaid averments in the petition, it is prayed that the result declared on 13.11.1988 for the post of Class-I & II by the GPSC should be quashed and set aside and the respondent should be directed to reconsider and reappreciate the result of the petitioner.

#. The affidavit-in-reply has been filed by the Deputy Secretary of the GPSC wherein the averments made in the petition are denied. In para 6, it is stated that Interviewing Committee had interviewed the petitioner and thereafter his performance was judged by the Board. In para 7 of the reply, it is stated that it is true that the petitioner had secured 328 marks out of 600 marks in the written test and that he has secured 24 marks out of

80 marks in the oral interview and as a result thereof the petitioner had secured 352 marks out of 680 marks in aggregate. In para 12 it is stated that the written test carries 600 marks whereas the oral interview carries only 80 marks and grand total is to be considered for the purpose of selection of the candidates. It is stated that only 11.76% of total marks is attributed to oral interview and that weightage given to the oral interview is much less. The marks obtained by other candidates are also mentioned at page 30 of the reply which are as under:

Sr. No.	Name of candidate	Marks obtained in written test.	Marks obtained at the interview	Total marks	Sub-caste
1	MH Gadhvi	389	34	423	Gadhvi
2	SK Langa	368	25	393	Charan
3	PK Barhat	373	17	390	Gadhvi
4	JK Gadhvi	348	38	386	Gadhvi
5	RG Gadhvi	346	36	382	Gadhvi
6	MD Gadhvi	356	22	378	Charan Gadhvi
7	Zala AN	327	42	369	Hindu Gadhvi

It is stated in the said para that the petitioner had secured 328 marks at the written test and 24 marks at the oral interview. It is therefore, stated that performance of the petitioner was very poor as compared to the performance of the above referred candidates. It is stated that papers of written examination were not examined by Mr.B.K.Gadhvi. The allegation of the petitioner therefore specifically denied in the

affidavit-in-reply.

#. From the aforesaid facts, it is clear that the marks of the written examination as well as of the oral interview were taken together for the purpose of making appointment and all those candidates who have secured more marks than the petitioner were ultimately found to have been selected. It is not even the case of the petitioner that those candidates who have secured less marks than him were selected ignoring his claim.

#. At the time of hearing of this petition, Mr.Nagarkar, learned advocate for the petitioner submitted that he is not pressing the grounds of mala fide which are raised in the petition. He further submitted that once the petitioner was called for oral interview, the marks obtained by him in the written test were not required to be considered and his performance was required to be judged only on the basis of the marks obtained by him in the oral interview.

#. Mr.Nagarkar also argued that the examination is divided into three parts. Initially, there is one written examination followed by the second examination and lastly oral interview. It is submitted that on the basis of the performance in the first written examination, candidates are allowed to appear in the second examination and on the basis of the performance in the second examination, they are called for the oral interview. According to Mr.Nagarkar, at the time of oral interview, what was required to be taken into consideration was only the marks which the candidates obtained in the second written examination and oral interview and the marks obtained by the candidates in the first written examination were required to be ignored.

#. Mr.D.N.Patel, learned advocate for the GPSC has relied upon the syllabus of each of the written examination. As per the said syllabus, different subjects are prescribed in part-I i.e. first written examination and part-II i.e. second written examination.

#. It is required to be noted that for the purpose of selection total marks i.e. marks obtained in the written examination and oral interview are required to be taken into consideration and on the basis of the aggregate marks obtained, selection is required to be made. Reference is required to be made to the examination rules known as "Gujarat Civil Services Recruitment (Examination) Rules, 1980". It is provided in Rule 16(c) of the said Rules that the Commission shall fix the

qualifying aggregate marks to be obtained by a candidate in the entire written examination and Viva-Voce and Personality Test together. In view of the aforesaid examination rules, it is clear that the Commission has to take into consideration the aggregate marks obtained by the candidates in both the written tests as well as in the oral test. In view of the aforesaid rules, it is not possible to accept Mr.Nagarkar's argument that the marks obtained only in the second written examination coupled with the marks obtained in the oral test should be basis for the selection and the marks obtained by the candidates in the first written examination should be ignored. Even in the petition, there are no such averments. The said argument of Mr.Nagarkar is, therefore, required to be rejected.

##. So far as the written examination is concerned, the same is in two parts i.e. part-I and part-II. There is a separate subject and syllabus prescribed for each of the parts.

##. It was argued by Mr.Nagarkar that subsequently another special civil application was filed, being Special Civil Application No.1017 of 1988, which was ordered to be heard with the present petition and in that petition, affidavit-in-reply was filed by the Commission to the effect that the marks obtained only in the second written examination are required to be taken into account. The said reply is not produced on the record of this special civil application. Not only that as per the office note, the said special civil application is already disposed of on 21.1.1991. However, affidavit-in-reply in the present case is very clear. Considering the examination rules, I do not agree with the argument of Mr.Nagarkar and it cannot be said that therefore it was not open for the respondent to include the aggregate of both the written examinations for the purpose of selection. In view of the aforesaid position and in view of the notification dated 1.4.1980 by which the provision is made in Rule 16 prescribing qualifying aggregate marks obtained by the candidates in the entire written examination and viva voce, it is not possible to accept the contention of Mr.Nagarkar.

##. The petitioner has not challenged the examination rules in this petition and looking to the averments made in the petition, the petition is filed merely on the basis of some allegations against the members of the Selection Committee. The prayer in the petition is also altogether on a different line. The petition is filed merely on the allegation regarding favouritism on the

part of the members of the Selection Committee and also regarding not giving suitable marks in the viva-voce.

##. In view of what is stated above, there is absolutely no substance in any of the arguments of Mr.Nagarkar. It cannot be said that the respondent has committed any illegality in considering the aggregate marks i.e. the marks obtained in the entire written examination and oral interview and it cannot be said that the respondent has committed any irregularity in allotting the marks on the aforesaid basis. The allotment of marks is in consonance with the examination rules. As stated earlier, the learned advocate for the petitioner has fairly stated that he is not pressing any ground regarding mala fide against the members of the Selection Committee.

##. In that view of the matter, there is absolutely no substance in the petition and the same is required to be dismissed. The petition is accordingly dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

(P.B.Majmudar,J)
(pathan)